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10/763,814	01/22/2004	Anthony F. Gigliotti	035813-003	5015

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Robert E. Krebs
THELEN REID & PRIEST LLP
P.O. Box 640640
San Jose, CA 95164-0640

EXAMINER

VO, TED T

ART UNIT	PAPER NUMBER
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2191

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/763,814

Applicant(s)

GIGLIOTTI ET AL

Examiner

Ted T. Vo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 20-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 20-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed on 10/30/2006.

Claims 1-15, 20-35 are pending in the application.

Response to Arguments

2. In view of the Applicants' amendment/remarks, filed on 10/30/06:

In the claims, for example Claim 1, Applicants amended with,

"comparing said application and system information with application and version information in a global update repository to determine if an update exists for a corresponding application controlled by an inoculation client, the global update repository including updates from multiple application manufacturers";

and, *"automatically transmitting said update to said corresponding inoculation client in response to said receiving a communication if an update exists for an application controlled by said corresponding inoculation client"* (The amendment is applied the same to Claims 20 and 35).

In view of the reference, Microsoft includes a Microsoft Baseline Security Analyzer. It is provided to perform comparing the security portions in a user computer to security update portions in a server that is accessible to the user (See p. 7, Microsoft includes a Microsoft Baseline Security Analyzer V1.1.1). The user is an *inoculation client*, whose Windows is under protection from computer malicious/worm attacks. It should be noted that when Microsoft discovers an attack to its Windows, it provides an update portion to its inoculation client, that is a "PATCH". This acts is similarly to a generic claiming, *"comparing said application and system information with application and version information"*, where Windows is an application, and Microsoft Windows operating systems/kernels in the Windows is *system information* with its Windows. The Windows such as XP or 2000 is *version information*.

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With regard to the limitation "Global", this language is relative. In a program, "global" means "entire a program" to distinguish with local variables, where a local variable will not used in another local memory. Similarly, within Microsoft's organization, to its inoculation clients who are under support with Microsoft products, "Microsoft" is global. The adding of "*the global update repository including updates from multiple application manufacturers*" does not make any patentable novelty. Moreover, the phrase *including updates from multiple application manufacturers* is only a mental indication, which is intended with a purpose rather than it limits the "comparing" of an application. Similarly, Microsoft is an *application manufacturer* of a Microsoft Windows version. Microsoft's repository stores information of its Windows' versions, and it also can store Linux or others, i.e. its website can provide a patch for Linux if there is a joint venture.

It should be noted that, In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960), the court held that mere duplication of parts (In this instant claim: *multiple application manufacturers*) has no patentable significance unless a new and unexpected result is produced.

With regard to the amended limitation, "*automatically transmitting*", the Internet technology allows a patch transmitted from a server to a client. In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958), the court held that broadly providing an automatic or mechanical means (In this instant claim: *automatically transmitting*) to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.

Thus, the arguments to the claims, amended in the submission filed on 10/30/06, fail to be persuasive.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-15, 20-35 are rejected under 35 U.S.C. 102(a) as being anticipated by Microsoft White Paper, "Understanding Patch and Update Management: Microsoft's Software Update Strategy", Microsoft Corporation, pages: i-iii, 1-14, October 2003.

Given the broadest reasonable interpretation of followed claims in light of the specification.

As per Claim 1: Microsoft discloses,

A method for automatically distributing a software update to a network of devices controlled by an organization, the method comprising:

receiving application and system information from one or more inoculation clients installed on said devices, said receiving performed via peer-to-peer communication; (See the whole reference, particularly, Microsoft provides tools to a client within a small Organizations (p.7), Medium-Sized Organizations (p. 9), Large Organizations (p. 11), etc., these organizations are inoculation client application and system information peer-to-peer receiver);

comparing said application and system information with application and version information in a lobal update repository to determine if an update exists for a corresponding application controlled by an inoculation client, the global update repository including updates from multiple application manufacturers;

(For example, see, p. 7, p. 10, Microsoft Baseline Security Analyzer supports security update that has means for comparing application and system information with the application and version information in an update repository. The analyzer supports for performing the security updates portion of a scan. Also see p 11, Microsoft Download website ('update repository'). See p. 13, "Microsoft Update", scheduled for release in Spring 2004, will consolidate the patches and updates into one repository ('update repository'). At launch, Microsoft Update will support patches, updates, and service packs for Windows 2000, XP, Server 2000

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& 2003 operating systems as well as Microsoft Office 2003, Microsoft SQL Server 2000, and Microsoft Exchange Server 2003);

queueing said update if an update exists for an application controlled by an inoculation client; receiving a communication from said corresponding inoculation client checking for available distribution jobs;

(For example, the baseline security Analyzer allows users to scan (*queue*) one or more Windows-based computers for common security misconfigurations (p. 7-8) (i.e. has means for *checking for available distribution jobs* – also has means for *comparing said application and system information*), Security Update Inventory Tool provides ongoing scans of client computers for installed or applicable security updates (p. 11), Microsoft Baseline Security Analyzer 2.0 provides a true enterprise-ready scanning technology (p. 13).

See content within Microsoft Baseline Security Analyzer 2.0 (p.13)); and

automatically transmitting said update to said corresponding inoculation client in response to said receiving a communication if an update exists for an application controlled by said corresponding inoculation client (For example, see Distribute Software Updates Wizard Installer (p. 11-12) and see Office Update Inventory Tool).

As per Claim 2: Microsoft discloses, *The method of claim 1, further comprising: configuring an inoculation server distributed across one or more of the devices; and performing an initial connection between said inoculation server and said global update repository* (For example, see P. 6: the AutoUpdate feature can be configured to retrieve patches directly from Windows Update at regular intervals. Individuals can choose whether to be prompted to install new updates or have them install automatically. See p. 9-10: Clients are configured to connect to specific servers and can be configured for automatic software update installations or end-user prompting).

As per Claim 3: Microsoft discloses, *The method of claim 1, wherein said application and system information includes operating system information and version* (See content within Microsoft Update (p. 13)).

As per Claim 4: Microsoft discloses, *The method of claim 1, wherein said application and system information includes installed software applications and versions* (See Software Updates Installation Agent (p.12)).

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As per Claim 5: Microsoft discloses, *The method of claim 1, wherein said application and system information includes network information* (For example, see Virus Information Alliance, p. 5).

As per Claim 6: Microsoft discloses, *The method of claim 1, wherein said application and system information is received in Extensible Markup Language (XML) format* (See Office Update Inventory Tool (p. 11)).

As per Claim 7: Microsoft discloses, *The method of claim 1, wherein said queuing said update includes linking said update package and said corresponding application in a database table* (For example, see Software Update Services Feature Pack, p. 11).

As per Claim 8: Microsoft discloses, *The method of claim 1, wherein the global update repository is a centralized repository that manages operating systems and software to be delivered to inoculation servers.* (i.e. Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 9: Microsoft discloses, *The method of claim 8, therein said global update repository mines, retrieves, and archives external update information* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 10: Microsoft discloses, *The method of claim 9, wherein said external update information is mined and retrieved from external security websites* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 11: Microsoft discloses, *The method of claim 10, wherein said global update repository uses web spiders* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 12: Microsoft discloses, *The method of claim 1, wherein said comparing includes utilizing an HTTP GET or POST command.* (Functional equivalence: "command line operations for scanning one or more Windows-based computers" (p. 8); "MBSA UI or in the MBSA command line interface, seen in p. 7")

As per Claim 13: Microsoft discloses, *The method of claim 9, wherein said external update information contains a vendor type, said vendor type being automatic download and release, automatic download and*

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manually confirm release, or manually download and confirm (See section Software Update Service 2.0, p. 13).

As per Claim 14: Microsoft discloses, *The method of claim 1, wherein said comparing is performed by an inventory control engine* (e.g. Security Update Inventory Tool, p. 11).

As per Claim 15: Microsoft discloses, *The method of claim 1, wherein said queuing is performed by a distribution engine* (e.g. Distribute Software Updates Wizard, p. 12).

As per Claim 20: Microsoft discloses claim 20. See rationale in addressed in Claim 1.

As per Claim 21: Microsoft discloses, *The apparatus of claim 20, further comprising: means for configuring an inoculation server distributed across one or more of the devices; and means for performing an initial connection between said inoculation server and said global update repository.*

See rationale in addressed in Claim 2.

As per Claim 22: Microsoft discloses, *The apparatus of claim 20, wherein said application and system information includes operating system information and version.* See rationale in addressed in Claim 3.

As per Claim 23: Microsoft discloses, *The apparatus of claim 20, wherein said application and system information includes installed software applications and versions.* See rationale in addressed in Claim 4.

As per Claim 24: Microsoft discloses, *The apparatus of claim 20, wherein said application and system information includes network information.* See rationale in addressed in Claim 5.

As per Claim 25: Microsoft discloses, *The apparatus of claim 20, wherein said application and system information is received in Extensible Markup Language (XML) format.*

See rationale in addressed in Claim 6.

As per Claim 26: Microsoft discloses, *The apparatus of claim 20, wherein said queuing said update includes linking said update package and said corresponding application in a database table.* See rationale in addressed in Claim 7.

As per Claim 27: Microsoft discloses, *The apparatus of claim 20, wherein the global update repository is a centralized repository that manages operating systems and software to be delivered to inoculation servers.* See rationale in addressed in Claim 8.

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As per Claim 28: Microsoft discloses, *The apparatus of claim 20, therein said global update repository mines, retrieves, and archives external update information.* See rationale in addressed in Claim 9.

As per Claim 29: Microsoft discloses, *The apparatus of claim 28, wherein said external update information is mined and retrieved from external security websites.*

See rationale in addressed in Claim 10.

As per Claim 30: Microsoft discloses, *The apparatus of claim 29, wherein said global update repository uses web spiders.* See rationale in addressed in Claim 11.

As per Claim 31: Microsoft discloses, *The apparatus of claim 20, wherein said means for comparing includes means for utilizing an HTTP GET or POST command.* See rationale in addressed in Claim 12.

As per Claim 32: Microsoft discloses, *The apparatus of claim 28, wherein said external update information contains a vendor type, said vendor type being automatic download and release, automatic download and manually confirm release, or manually download and confirm.* See rationale in addressed in Claim 13.

As per Claim 33: Microsoft discloses, *The apparatus of claim 20, wherein said means for comparing is an inventory control engine.* See rationale in addressed in Claim 14.

As per Claim 34: Microsoft discloses, *The apparatus of claim 20, wherein said means for queuing is a distribution engine.* See rationale in addressed in Claim 15.

As per Claim 35: Microsoft discloses claim 35. See rationale in addressed in Claim 1.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTV
February 02, 2007


TED VO
PRIMARY EXAMINER
TECHNOLOGY CENTER 2100